

**STATEMENT OF  
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ENVIRONMENT  
UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE  
UNITED STATES SENATE  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
COMMITTEE ON ENERGY AND NATURAL RESOURCES**

**March 24, 2004**

**CONCERNING**

**H.R. 1964 The Highlands Conservation Act  
S. 2180 To direct the Secretary of Agriculture to exchange certain lands  
in the Arapaho and Roosevelt National Forests in the State of Colorado  
S. 433 Clearwater Basin Project Act**

Mr. Chairman:

Thank you for the opportunity to appear before you today in order to provide the Department's views on H.R. 1964 The Highlands Conservation Act, S. 2180 to direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado and S. 433 The Clearwater Basin Project Act. I am accompanied today by, Marcus Phelps, Highlands Coordinator of the Forest Service Northeastern Area.

**H.R. 1964 The Highlands Conservation Act**

H.R. 1964, the Highlands Conservation Act would authorize the Secretary of the Interior and the Secretary of Agriculture to work with States, local units of government, and private landowners in the conservation of lands and natural resources in the Highlands region of Connecticut, New York, New Jersey, and Pennsylvania.

The Department defers to the Department of the Interior for general views on the bill but would like to offer several comments on section 6 of the bill as well as a brief discussion regarding the Department's previous and ongoing work within the Highlands.

H.R. 1964 directs the Secretary of Agriculture, acting through the Chief of the Forest Service and in consultation with the Chief of the Natural Resources Conservation Service, to continue to assist the Highlands States, local units of government, and private forest and farm landowners in the conservation of lands and natural resources in the Highlands region. H.R. 1964 would authorize appropriations of \$1,000,000 to the Secretary of the Agriculture for each of fiscal years 2005 through 2014 to carry out this section.

At the direction of Congress, in 1992, the USDA Forest Service completed the New York-New Jersey Highlands Regional Study that characterized the water resources, wildlife habitat, outdoor recreation opportunities, and agricultural resources in the region. This study identified lands with important resource values such as the Sterling Forest located near Tuxedo, NY.

At the direction of Congress, the Forest Service updated the New York-New Jersey Highlands Regional Study in 2002. The original study area was expanded from the Hudson River eastward to the New York-Connecticut border. The Update identifies a number of many important natural resources in the Highlands, and the effect of existing patterns of land use change on these resources. Some key findings from the 2002 Update include:

- The Highlands adjoin a metropolitan area of more than 20 million people.
- More than 11 million people rely on the Highlands water resources.
- More than 14 million people visit the Highlands each year for recreational opportunities.
- 5,200 acres per year of land was developed between 1995 and 2000.

- Almost 40 percent, 540,000 acres, are considered to have high conservation value. Nearly half of these lands are currently in some type of permanent conservation arrangement, such as an easement or under a nonprofit land trust holding.
- Approximately 100,000 acres considered to have high conservation value have a high likelihood of change.
- Forty two of the 51 existing Hydrologic Unit Code 11 watersheds (which have an average area of about 50 square miles) presently have 10 percent or less impervious surface cover (a significant indicator of water quality). Depending on the rate of land use change, the number of Hydrologic Unit Code 11 watersheds with less than 10 percent or less of impervious surface cover could fall from 42 to about 9 to 18 in the next thirty years.
- The future population in the New Jersey-New York Highlands could increase by 26 to 48 percent in the next 30 years, based on our analysis.

In addition to updating the 1992 Study, Congress directed the Secretaries of Agriculture and the Interior to jointly develop a set of recommendations identifying ways that Federal government can work with State, local and non-profit partners to address important resource issues, based on the findings of the 1992 Study and 2002 Update.

Our efforts to address these findings continue in the New York and New Jersey portions of the Highlands region through a Forest Service staff position established to coordinate and implement conservation strategies, and the ongoing support of an internet mapping system at Rutgers University to provide direct access to study data and maps. Also, a recent regional meeting held at the Lautenberg Visitor Center in what is now the Sterling Forest State Park in Tuxedo, New York, brought together, for the first time, representatives of the various Federal agencies involved with the Highlands region to share information and identify ways to improve inter-agency communication and coordination.

Over the past 10 years, the Forest Legacy program has protected 3444 acres with \$4,200,000 in Federal funds that has leveraged over \$14,000,000 in non-federal funds in New Jersey and New York. Over the last five years, the Forest Legacy program has provided \$14,300,000 of funding that is expected to protect over 8,700 acres in the New Jersey Highlands and to leverage over \$32 million of state and private partner funds for land conservation. In addition, the Forest Service has provided assistance to private landowners, nonprofits and State and local governments, through a range of Forest Service non-regulatory, cooperative programs of more than \$1,000,000 toward land conservation activities in those two states. These include technical and financial assistance to states and communities and landowner assistance for management planning and implementation of conservation practices.

I want to bring to the Committee some issues that the Department has identified with H.R. 1964 that may require further consideration by the Committee.

First, the legislation covers a four-state region. The Department's efforts to date have concentrated on the 1.5 million acre New York-New Jersey portion of the region, and have only generally characterized the resource values and boundaries of the Pennsylvania and Connecticut portions of the Highlands. More thorough consideration and inventory of the resource values in Pennsylvania and Connecticut is needed. In addition, , the committee may wish to consider adding language that would direct the Secretaries to prepare a map to delineate the Highlands Conservation Area and eliminate any uncertainty regarding the area within projects would be eligible for assistance.

To our knowledge, the bill does not authorize any activity by the Forest Service and the Department of Agriculture that is not already authorized under current law. USDA could designate the Highlands area as a high priority within existing authorities to permit its agencies to address resource issues in the Highlands region. The bill's targeting of technical assistance, financial assistance, and land conservation projects could require USDA to determine the priority of these activities relative to other high-priority programs or projects that may rely on the same funding source.

## **S. 2180 —Arapaho and Roosevelt National Forests Land Exchange Act of 2003**

The Department does not object to S.2180 but would like to recommend some changes to the bill for the Committee's consideration.

S. 2180 directs the Secretary of Agriculture to exchange to the City of Golden, Colorado all right, title and interest in 9.84 acres of Federal land within the Arapaho National Forest, upon receipt of acceptable title to 135.9 acres of non-Federal land. The 135.9 acres consist of two separate parcels, including 80 acres near Evergreen, Colorado known as Cub Creek and 55.9 acres near Argentine Pass, Colorado known as Argentine Pass. The 55.9 acre Argentine Pass property is made of 15 patented mining claims. The bill modifies the exterior boundary of the Arapaho National Forest to incorporate the Cub Creek parcel.

The bill requires the exchange values to be equalized. If the non-Federal parcel market value exceeds the approved market value of the Federal land, the values may be equalized by reducing the size of the Cub Creek non-Federal parcel or with a cash equalization payment without regard to the cash equalization limitation of 43 U.S.C. 1716(b), as amended.

If the Federal land market value exceeds the market value of the Cub Creek non-Federal parcel, the values shall be equalized by the Secretary preparing a statement of value for the Argentine Pass non-Federal parcel and utilizing as much of such contributory value as is necessary as a credit to equalize value. Argentine Pass lands not needed to balance the exchange values will be donated to the Forest Service. In the event the Secretary declines to accept the Argentine Pass lands for any reason, Golden shall make a cash equalization payment to the Secretary as necessary to equalize the values of the Federal land and the Cub Creek parcel. We recommend that any cash equalization funds received be considered money received and deposited pursuant to Public Law 90-171 (16 U.S.C. 484 (a)), commonly known as the "Sisk Act," and may be used, without further appropriation, for the acquisition of lands for addition to the National Forest System in the State of Colorado.

S. 2180 indicates Congress' intent that the land exchange be consummated no later than 120 days after enactment and authorizes the City of Golden to construct a water pipeline on the 9.84 acres of Federal land immediately upon enactment and prior to the consummation of the exchange. We are concerned that we may not be able to complete environmental consultation and clearances required for the disposal of the federal property in 120 days. We request extending this timeframe to 180 days. While we are appreciative of the inclusion of the timing and interim authorization clause as described in the bill, we do not support construction occurring prior to conveyance of this property to the City of Golden. At the very least, we would expect that the City would be required to operate under a special use permit as long as the property remains in Federal ownership. Our preference is to delay construction of the pipeline until the conveyance is completed.

S. 2180 directs the City of Golden to pay for any necessary land surveys and appraisals. Further, the bill authorizes and directs the Secretary to sell the Federal land to Golden at its appraised value, if the land exchange cannot be consummated for any reason.

Public interest could also be served by the Arapaho National Forest acquisition of the 135.9 acres of non-Federal land. Specifically, the acquisition would eliminate a forest in-holding, and could: reduce cost of forest boundary administration, increase recreation opportunities, and ensure permanent public access to a portion of the Continental Divide National Scenic Trail. The Department supports the concept of the exchange identified in S.2180 and would like to work with the Committee to see this exchange proceed with mutual benefit.

S.180 highlights how detailed legislation is often required to conduct land exchanges. The FY 2005 Budget includes a proposal to amend the Small Tracts Act, the Sisk Act, and the Townsite Act, which would provide the Secretary the authority to sell or exchange land, to promote more efficient real estate management of National Forest System lands and facilities. The Budget also includes a proposal for a Facilities Acquisition and Enhancement Fund that would enable the Secretary to sell facilities and appurtenant administrative land, excess to agency needs, and to use the proceeds for

acquiring or developing land and improvements for administrative purposes. The Department will submit proposed legislation concerning these proposals in the upcoming weeks.

#### **S.433 The Clearwater Basin Project Act**

S.433 would establish a pilot program and the Clearwater Advisory Panel (CAP), for the purpose of improving collaborative relationships and providing advice and recommendations to the Forest Service regarding a pilot project and activities under the pilot project on National Forest System lands in the Clearwater and Nez Perce National Forest in Idaho.

Under S.433, the Clearwater Advisory Panel (CAP) and the Forest Service, working collaboratively with the Nez Perce Tribe and other interested parties, would identify and complete high priority activities to improve ecosystem health for fish, wildlife, and other community values that complement existing management of the Clearwater and Nez Perce National Forest.

Based upon experience with collaborative management and stewardship projects, the Department believes this legislation generally reflects objectives and provisions currently authorized in the Consolidated Appropriations Resolution, 2003, amending Public Law 105-277, section 347. We are not opposed to the measure, but it may add additional costs that could in turn reduce the amount of on-the-ground resource management that could be accomplished. We would like to work with the committee to make necessary improvements to the bill.

Section 3 Establishment and Purpose subpart (d) Composition and Advisory Panel states that the advisory panel shall be comprised of 15 members who shall be representative of the interests of three categories of individuals. While we agree with this purpose, the bill is unclear as how the Advisory panel would proceed in the event that all fifteen positions could not be filled. In addition, it would appear that the North Central Idaho Resource

Advisory Committee may provide the necessary forum to achieve the purpose of establishing collaborative relationships and identifying stewardship projects for the pilot project area.

Section 4 Clearwater Basin Pilot Project subpart (c) Stewardship Contracts identifies a total of three stewardship contracts authorized for recommendations by the advisory panel. The bill is unclear as to whether the identified stewardship contracts are for the entire life of the pilot project or for the first five year period.

S. 433 would require the Forest Service to conduct and complete any applicable procedures under the National Environmental Policy Act (NEPA) and any review, consultation, or coordination under other laws within one year. Non-compliance within the required one-year period would not be a basis for challenging or delaying submittal, approval, or implementation of an activity, if the applicable Forest Supervisor, in consultation with CAP, finds that sufficient review, consultation and coordination has occurred and a sufficient record exists to make a reasoned decision regarding approval of the activity.

While setting a required one-year time period for completion of the above mentioned analysis and decision making may be appropriate for routine proposals brought forward by the CAP, it may not be sufficient for other high priority, complex and broader scale ecosystem health actions the CAP would propose for analysis. In addition, it would be highly unlikely there would be a sufficient record (NEPA analysis, Biological Opinions and Consultations to comply with other applicable environmental laws) available to make a reasoned decision in the event the one-year time period elapsed and insure a defensible decision while being subject to the rigors of the agency's appeal and dispute resolution processes in accordance with 36 CFR 215.

Under subsection (g) Review by Forest Supervisor the bill states-- if the Forest Supervisor does not issue a decision within a 30-day period, the schedule would be deemed approved and subject to the agency's appeal and dispute resolution process. If



there is no NEPA decision document issued, it is unclear as to what would be subject to agency appeal. Environmental analysis is not complete unless a decision document has been signed by an authorized official and thus would not be in compliance with NEPA or subject to agency appeals and dispute resolution processes in accordance with 36 CFR 215.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions you may have for me at this time.